by special replication. The special replication having gone out of use, its modern substitute is an amended bill. That is, as it would seem, wherever a special replication would have been required under the former practice, the plaintiff must now file an amended bill. 4 Minor's Inst. (3d ed.) 1445; Story's Eq. Pl. 878. The precise question whether coverture might formerly have been shown under the general replication in equity, and whether therefore it may still be so shown, seems not before to have been adjudicated. Inasmuch, however, as coverture may be shown at law under even so narrow a plea as the general issue of *non est factum*, as well as under the broader issues of *nil debet* and *non assumpsit*, the ruling of the court in the principal case that coverture might be proved under the general replication, follows the legal analogy, and seems to be sound.

Another unusual question before the court for decision was, whether Professor Minor's third exception to the common law disability of a married woman to make contracts, namely, where the husband is an alien enemy (1 Minor's Inst., 4th ed., 367) is sanctioned by the common law. The court holds that the better rule is *contra*, and hence that a release executed during the civil war by a married woman, living in Pennsylvania, where, by presumption, the common law prevailed, was not rendered valid by the circumstance that her husband was a soldier in the Confederate army.

The court also rules, without discussion and without citation of authority, that the courts of Virginia will presume, in the absence of proof to the contrary, that the common law, as interpreted in this State, prevails in the sister States. Where the domestic law rests in statute, there is some conflict in the authorities as to whether the domestic courts will presume that a similar statute exists in the State where the course of action arose. See Dicey's Confl. Laws, 719–720; Story's Confl. Laws, 637. Professor R. C. Minor (Confl. Laws, 214) expresses the view that by the great weight of authority, the court will presume the foreign law to be identical with the domestic law, where there is no proof on the subject, even though the domestic law be statutory—a view which he deems somewhat illogical, but one justified by expediency.

NATIONAL VALLEY BANK OF STAUNTON, VA., v. HANCOCK & OTHERS.*

Supreme Court of Appeals: At Richmond.

January 23, 1902.

Absent, *Harrison* and *Whittle*, JJ.

1. FRAUD—*Improvements on another's land—Rights of creditors.* Improvements put upon the property of another by an insolvent debtor may be followed by his creditors, and the realty on which they are placed may be charged with their value.
2. ASSIGNMENTS—*Right to avoid prior fraudulent conveyance.* A purchaser of a pre-existing note may sue in equity to avoid a conveyance made in fraud of

* Reported by M. P. Burks, State Reporter.

the rights of the holder before his purchase. The rule that a mere naked right to sue to avoid a fraud is not assignable does not apply to a case where such right is merely incidental to a subsisting substantial property which has been assigned, and which is itself intrinsically susceptible of legal enforcement.

3. TRUSTS AND TRUSTEES—*Support of beneficiary—Discretion—Fraud—Injury to creditors.* Where a father who is trustee for his wife and children and as such invested with a discretion to spend the income of the trust subject for their maintenance and support, collects the income and mingles it with his own, and makes extensive improvements on the trust subject, but settles no account of his transactions, he will not be permitted, to the prejudice of his creditors, to assert that he has supported his wife and children from his private means, so as thereby to enhance the value of the trust subject. He will be held to have supported them out of the trust funds, and his creditors will be permitted to follow his estate into the trust subject.

4. TRUSTS AND TRUSTEES—*Express trust—Support of children.* A devise to a father for the support and maintenance of his wife and children creates an express trust for the latter, and the income derived from the trust subject must be so applied irrespective of the father's ability to support and maintain them.

Appeal from a decree by the Circuit Court of the city of Lynchburg, pronounced October 9, 1900, in a suit in chancery, wherein the appellant was the complainant, and the appellees were the defendants.

Reversed.

The opinion states the case.

Harrison & Long, for the appellant.

Caskie & Coleman and *Wilson & Manson*, for the appellees.

KEITH, P., delivered the opinion of the court.

It appears from the bill that the National Valley Bank of Staunton on the 20th of December, 1894, discounted for the Traders Bank of Lynchburg its note for $5,000, which, after being curtailed from time to time, was renewed on the 19th of December, 1896, for $3,150, at sixty days. Along with this note certain collaterals were delivered from which there was realized the sum of $1,150.25; those uncollected were returned to the Traders Bank, and in place of them the Bank of Staunton received six notes as security for its debts. The collaterals thus received were three notes of Rucker, Clark & Co., dated August 23, 1894, payable thirty-nine months after date to James Hancock, and endorsed by James Hancock and the Traders Bank of Lynchburg, each for the sum of $225.20; two notes of P. V. Rucker, dated Octo-

ber 1, 1894, payable three years and forty-two months respectively after date to Rucker, Clark & Co., and endorsed by Rucker, Clark & Co., James Hancock and the Traders Bank of Lynchburg, each for $250; and one note of W. E. Clark, dated October 1, 1894, payable thirty-nine months after date to Rucker, Clark & Co., and endorsed by Rucker, Clark & Co., James Hancock, and the Traders Bank of Lynchburg for $250.

The bill charges that after exhausting every means to collect the collaterals in the possession of the Bank of Staunton, there was a balance due by the Traders Bank of Lynchburg of $1,999.75 of principal, and $267.55 of interest, as of February 24, 1899, which will be wholly lost unless it can realize on the notes endorsed by James Hancock.

It is charged that James Hancock holds title as trustee under the fifth clause of the will of his father, the late A. G. Hancock, to a valuable house and lot situated on Main street, in the city of Lynchburg, called the Traders Bank Building, now occupied by the National Bank of Lynchburg. The trust declared by the will of A. G. Hancock is as follows:

"Item 5. I give and devise to my said son, James Hancock, as trustee for his wife and children, including those now born and all that may be born to him by his present or any future wife he may take, my store house and lot on Main street, Lynchburg, on the west side between 9th and 10th streets, now occupied by M. E. Doyle, which I value at $14,000, to be held in trust not subject to his debts or liabilities for the support and maintenance of his present and any future wife he may take and all his children, the said trust to continue during the life of the said James Hancock, and if at his death he shall leave a wife surviving him, until her death. Upon his death, if no wife survive him, or if one do survive him, upon her death, the said property shall pass in fee-simple absolute to all the children of the said James Hancock in equal shares. The descendants of any who now have died leaving descendants then surviving to take the share of their deceased ancestor."

This will bears date April 17, 1888, and was recorded in the clerk's office of the Corporation Court of Lynchburg on June 6, 1888. Those interested in the foregoing clause are, Alice Hancock, wife of James Hancock, and certain infant children.

The bill states that the building at present on the lot was "erected during the year 1895 by the said James Hancock, and paid for by him with his individual funds, at which time Hancock was indebted as aforesaid on the notes held by your orator herewith filed, and your orator is advised that the said Hancock, being thus indebted, could

not lawfully divert his own estate to the improvement of the trust estate as aforesaid and leave his indebtedness to your orator unpaid and unprovided for; that the money expended by Hancock out of his individual estate in improving the trust estate, being voluntary and without consideration, was in fraud of the rights of your orator, and that the estate can, in favor of your orator, be charged with the value of said improvements."

James Hancock in his answer denies that the present indebtedness of the Traders Bank to the complainant, or that any part thereof, existed in 1895, and claims that only one of the respondent's notes ever came into the complainant's hands as collateral for the original debt. The answer denies the allegation that James Hancock expended money out of his individual estate in improving the trust property held under the will of his father, or that it was made in fraud of complainant's rights. His account of the transaction is that when the property was devised by his father it was valued at $14,000, with a storehouse which was rented out up to January 1, 1895; that during this period respondent had a good income from his own property and business, which was that of a leaf tobacco dealer; that he was able to maintain and did maintain his wife and children from his own means, and as the storehouse was old, and getting into bad condition, he determined to tear it down and erect a bank building on the trust property; that respondent owed the trust fund the sum of $602.30, with interest from November 5, 1888, and rents received from the trust property from 1888 to 1895, amounting to the sum of $5,765; that he erected the building under a contract with the Traders Bank to rent it at an annual sum of $1,750; that it cost $9,100, and that since January 1, 1895, and prior to the institution of this suit, he had collected from the rents of said property the sum of $6,391.66, had paid the city taxes amounting to $408.90, and States taxes amounting to $109.08, so that the balance due respondent from the trust fund had been paid back to him in full.

Upon the issues thus made and the proof in support of them, the Judge of the Circuit Court "being of opinion that the allegation of the bill that the moneys expended by the defendant, James Hancock, trustee, in improving the trust property was of his individual estate and voluntary and without consideration, is not sustained; but to the contrary, the evidence shows that the moneys belonging to the children and the rents received from the trust property by said trustee

constituted a valuable consideration for the expenditures made," dismissed the bill.

The case is before us upon an appeal from this decree.

There can be no doubt of the right of a creditor in a proper case to subject improvements made by his debtor on the property of another. This subject was recently considered by this court in *Building Association* v. *Reed*, 96 Va. 345, where the court, speaking through Judge Harrison, said: "D. V. Reed, having created the debts due to the appellants, could not thereafter lawfully divert his estate to the payment of purchase money due from his wife on her separate real estate, or to the cost of improving said real estate, leaving his own debts unpaid, and without the means of payment. It is well settled that improvements put upon the wife's separate realty by the husband in fraud of creditors, can be followed by the creditors on the premises where they are put, and the realty can, in favor of the creditors, be charged with the value of such improvements. It would be contrary to the plainest principles of right and justice to permit an insolvent husband to divert his means, and invest it in improving his wife's separate estate, which is not liable to his debts, and thus defeat the demands of his creditors."

Appellee insists, however, that inasmuch as the notes with which it is now sought to charge the trust property were assigned to the Bank of Staunton after the erection of the building, that appellant would have no right to attack the transaction even though it were conceded that Hancock had improved the trust property with his own funds, invoking for his protection the principle that "an assignment of a bare right to file a bill in equity for a fraud committed upon the assignor will be held void, as contrary to public policy, and as savoring of the character of maintenance."

It is true that a mere naked right to sue in equity to avoid a fraud is not assignable, but as stated in Vol. II, pp. 1024-5, of the 2d ed. of the Am. & Eng. Ency. of Law, this rule applies only to a case where the assignment does not carry anything which has itself a legal existence and value independent of the right to sue for a fraud. It does not apply to a case where such right is merely incidental to a subsisting substantial property which has been assigned, and which is itself intrinsically susceptible of legal enforcement. In such a case the assignee is entitled to maintain an action to set aside a fraudulant conveyance of the property assigned, if his assignor might have done so."

Waite on Fraudulent Conveyances (2d ed.), sec. 92, says "that the

right to avoid a fraudulent conveyance is not personal to the then existing creditor; his successors and assigns may enforce the right. Thus the subsequent purchaser of a pre-existing note may attack a transfer." *Warren* v. *Williams*, 52 Me. 349; *Billingsley* v. *Clelland*, 41 W.Va. 234; *Schaefermann* v. *O'Brien*, 28 Md. 565.

2 Minor's Institutes, p. 690, treating of the right to avoid voluntary conveyances, says that the statute upon the subject protects persons suing *ex maleficio*, as for adultery or seduction, or any tort, and *a fortiori*, those claiming *ex contractu*, as for a debt, or for breach of an official bond, and that whether as the original creditor or his assignee. *Clough* v. *Thompson*, 7 Gratt. 26; *Staton* v. *Pittman*, 11 Gratt. 102; *Shirley* v. *Long*, 6 Rand. 735.

This brings us to the consideration of the controlling question in the case: Does the record establish the allegation of the bill that Hancock, being at the time indebted, diverted his own estate to the improvemement of the trust estate, in derogation of the right of his creditors?

It is true that a father, if of ability to do so, is bound to maintain his infant children, even though they may have property of their own. *Evans* v. *Pierce*, 15 Gratt. 515; *Griffith* v. *Bird*, 22 Gratt. 73. This principle is stated by Perry on Trusts as follows: "A father is bound to maintain his infant children if he has sufficient ability; therefore a trustee cannot apply any part of the income of an infant's estate to its maintenance without an order of court. If the father has the means to maintain his children, the trustee cannot apply income to their support, although there is a provision for their maintenance in the instrument. Sec. 612.

There seems, however, to be an exception or modification of this rule, which in the section just quoted from Perry is thus stated: "If there is an agreement in a marriage settlement that the father shall have maintenance out of the trust property, the trustee must apply the income to the support of the children without reference to the father's ability to support them. If, however, the trustees have a discretionary power in that respect, the father cannot compel them to exercise it in his favor; nor will the court interfere if they choose to exercise their discretion. But where the income is expressly given to the father for the maintenance of his children, these rules do not apply; for such gift is in some sort a gift to the father."

3 Pomeroy's Eq. Jur., in a note to section 1309, gives the exception to the rule as follows: "Where the property is not given to the

infants simply with a direction for their maintenance, but is conveyed upon an express trust for their maintenance, then it must be so applied, irrespective of their father's ability to support and educate them." This distinction is recognized in 2 Story's Eq. Jur. p. 600, note.

In a note to *Hughes* v. *Hughes*, 1 Brown Chan. Reps. 387, it is said, that maintenance of infants is not allowed by courts where the parent is of ability, although directed by the will. In a note it is said that Lord Thurlow continued of this opinion for some time, and the precedents certainly supported him, but that afterwards he changed his opinion and the practice afterwards became varied and was settled to the contrary. "It appears, therefore," says the annotator, "that each case must be viewed by the court so as to meet its exigencies by a sound discretion, unfettered by any strict rule of mere technicality; and that it will not only now allow maintenance for the time past, where it should be allowed at all, but will, in a fit case, direct maintenance, although the author of bounty may not have expressly prescribed it. The court will also dispense with any reference as to the father's ability, where the circumstances are strong; as where the fortune of the child is very large and the father has other children, or will be much inconvenienced by the burden of supporting the child adequately to a fortune in which he, the father, cannot participate."

In *Mundy* v. *Howe*, 4 Brown's Chan. 226, the Lord Chancellor said: "It is perfectly clear, from the cases, that where the fund is given as a bounty, notwithstanding a provision for maintenance, the father, if of ability, must maintain the child; (2) but in this case it is part of the execution of the trust contained in the contract."

In *Davy* v. *Ward*, Chan. Div. Law Repts., 1877–8, p. 754, a testator gave a legacy of £3,000 to three children, or the survivors or survivor, who should attain twenty-one; but if all three died under twenty-one, there was a gift over. The will contained a direction to the trustees to apply the whole or such parts as they should think fit of the income of the legacy for the maintenance and education of the legatees while under twenty-one. The court held that it had power to control the discretion of the trustees in the allowance to be made for children; and the court, in opposition to the trustees, directed that the whole income should be paid to the father of the children for their maintenance, together with an equal amount for past maintenance.

In *Ransom* v. *Burgess*, Equity Cases, Law Reports, 1866–7, p. 773, Vice-Chancellor Kindersley states the result of the cases to be "that where the trust property is derived from the bounty of a stranger, the

father, if of sufficient ability, is not entitled to have the income applied to the maintenance of his children, but that if the trust property is the subject of a marriage settlement, and therefore the creation of the trust is matter of contract, then, if the language of the settlement is so framed as to express a trust to apply the income or any part of the income in maintaining the children, although the quantum of income to be so applied is left to the discretion of the trustees, the father is entitled to have whatever is proper and necessary for the maintenance of his children applied for that purpose, without reference to his ability to maintain them; but if the language of the settlement expresses merely a power so to apply the income, or any part thereof, to the maintenance of the children, then the father is not so entitled."

In *Hadow* v. *Hadow*, 16 Eng. Chan. 438, the testator gave one-third of his residuary estate to his wife, and the other two-thirds to trustees in trust for his children at twenty-one; and directed that, until the shares of his children should be payable to them, the income thereof should be paid to his wife, to be by her applied, or, in case of her death, to be applied by the trustees, for the maintenance of the children. It was held "that the wife was entitled to the income of the children's share during their minorities, she maintaining them in a proper manner."

In *Browne* v. *Paul*, Eng. Chan., 1 Simon, New Series, p. 92, the testator gave all his property to trustees in trust, to pay an annuity to his wife, and subject to that payment, to convey, assign or transfer all his property, unto and equally between his children, when, and as they severally attained twenty-one; and, in the meantime, to pay to his wife, or otherwise apply the rents and proceeds of their respective shares for or towards their respective maintenance, education and advancement. It was held that "where, during the minority of a child, the interest of such child's legacy is directed to be paid to the parent, to be applied for or towards its maintenance, there the direction as to the application is a mere charge, for the benefit of the child, on what is, substantially, a gift to the parent subject to such charge."

These cases are not cited because of their similarity to the case under consideration, but as showing that the rule which requires a father to support his child is one which has been in later years greatly relaxed, and which depends in its application upon the circumstances of the particular case. As was said by Judge Robertson in *Evans* v. *Pierce*, *supra*: "The court will look with liberality to the circumstances of

each particular case, and to the respective estates of father and children, and will authorize the income arising from the estates of infants to be applied to their support whenever, under all the circumstances, it appears to be proper."

In *Griffith* v. *Bird, supra,* the court held that where a father, who was the guardian of two of his children, maintained and educated them at his own expense and made no charge against them, and died in February, 1861, up to which time his estate was ample to pay his debts, but became insufficient to do so by losses incurred thereafter, that between the father and his creditors his child would not be charged in the guardianship account with the cost of their maintenance and education.

The financial condition of James Hancock at his father's death does not appear. The trust property vested in him as trustee, under the fifth clause of his father's will, for the support of his wife and children, passed at once under his control. He collected the rents, commingled them with his own funds, rendered no account, and in January, 1895, claims that he was indebted to that fund in the sum of $5,765.85, which, if true, proves that he had during that period appropriated that much of the rents derived from the trust property to his own use, in violation of the terms of the trust which had been reposed in him. Is that true? Had there been during that period any diversion by the trustee of the trust fund confided to his care? The house, valued at $14,000, was devised to him by his father as trustee for his wife and children, to be held not subject to his own debts or liabilities, but in trust for the support and maintenance of his present or any future wife that he may take, and his children, the said trust to continue during the life of James Hancock; and if, at his death, he shall leave a wife surviving him, until her death. Upon the death of James Hancock and wife, the trust ceased and the property vested in fee simple absolute in all of his children in equal shares. His claim now is, that in 1895 he was indebted to the trust fund, because it was his duty to support his children; that he was of ability to do so, and that he was guilty of a breach of trust in appropriating the trust property in part discharge of the duty which the law had imposed upon him. If the will of A. G. Hancock had merely conferred a power upon the son as trustee, so to apply the rents and profits of the trust property, it would be a most dangerous precedent, in our opinion, to allow him, after he had exercised that power and appropriated the rents of the trust property to the maintenance and support of his wife and children, to recall the

exercise of the discretion with which he had been invested, and permit him to reconstruct the past as between himself and the trust fund and his beneficiaries, and after a lapse of eight years to constitute himself a debtor to the fund which had been confided to his control. If, we repeat, the will had clothed him with the exercise of a mere power, and that power had been exercised in accordance with its terms, the court would be slow to re-open the transaction and restate the account, for to do so would be to multiply opportunities for fraud and imposition upon innocent creditors. But in the case before us the trustee was not clothed with a mere discretionary power. He received the property impressed with a trust for the support of his wife and children. Its income seems to have been applied during all these years in strict conformity with his duty as prescribed by his father's will, and where is the wrong and injustice of which his beneficiaries can now be heard to complain?

This house and lot, which is the subject of the trust, was, at the date of the testator's death, rented for the sum of $——. By reason of the improvements which have been placed upon it under the circumstances which have been detailed, a contract for its rental was entered into before its erection at the sum of $1,750 per year. Its yearly value had been increased more than 90 per cent.

The conduct of the trustee in this case was well calculated to beguile and mislead those who dealt with him. Had he settled his accounts and charged himself with the accumulation of rents from the trust property, all who extended credit to him would have done so with their eyes open; but there was nothing to disclose the true condition of his affairs, and much to lull them into a false security. He not only stated no account, but for all that appears he kept none; he commingled what he received from the trust with his own money, and drew upon it as a common fund.

A trustee cannot, of course, by such conduct prejudice the trust, but the question here is, whether he shall defeat his creditors, not for the protection of the trust from loss, but its augmentation by the process of capitalizing the rents derived from it. Equity enjoins upon us the duty of being just before we are generous. As we have seen, if the trustees have discretion as to the application of the fund to the support of the children, the court will not at the father's instance compel them to exercise it, he being of ability. Nor will the court interfere with their discretion if they see fit to exercise it. 2 Perry, sec. 612. So by parity of reasoning, where the trustee has exercised the discretion

and supported the children, the father will not be permitted to restore to the trust fund what had been rightfully appropriated in order that he may augment the trust fund and evade the payment of his honest debts, for that would be to make the rights of men depend not upon law but the whim, the caprice, the preference, or the interest of the individual.

If the will is to be construed as not clothing the trustee with a mere discretion, but as creating an express trust for the support of the wife and children, which we think is the true construction, then the case is still stronger for appellant, for then it must be so applied irrespective of their father's ability to support and educate them. 3 Pom. Eq., *supra.* Either view is conclusive of the case, for if such be the law where there is a discretionary power or an express trust in cases in which the father is not the trustee, the union of the two relations in one person can have no influence upon the result.

The case of *Norris* v. *Jones*, 93 Va. 176, seems to be relied upon by appellees. An insolvent son had made a gift to his mother, and a creditor, whose debt arose prior to the gift, brought a suit to hold the mother liable for its payment and subject it to the payment of his debt, but it appearing that prior to the institution of the suit the mother lent the son an amount larger than the gift, that there was no actual fraud, and that the mother had no knowledge of the insolvency of the son, the court held that there was no liability upon her. It could not have been otherwise. There is no actual fraud; there had been a restoration to the son's estate by the mother of what she had received; the ability of the son to meet his obligations had not been diminished, and the creditor in no respect prejudiced by the transaction.

We are of opinion that to sanction what was done in this case would be to permit a trustee to change his course of conduct in the light of subsequent events, and of his altered financial condition, and to permit him to simulate a debt to the estate under his control in order that it might be augmented for the benefit of his wife and children at the expense of existing creditors.

The decree of the Circuit Court must be reversed. *Reversed.*

NOTE.—The question of the duty of a father to support his infant children, incidentally involved in this case, was the subject of an elaborate discussion by Professor Vance, of Washington & Lee University, in 6 Va. Law Reg. 585. The chief point in the case, however, was not so much whether this liability rested upon the father as a legal duty, as whether, under the terms of the trust deed before the court for construction, the father and trustee might lawfully apply

the income derived from the trust to the support and maintenance of wife and children, though himself abundantly able to provide such support. We find no difficulty in assenting to the reasoning and conclusion of the court that the trustee in this case was authorized to expend the income for the maintenance of his wife and children, and having so expended it, he could not, after his insolvency, treat the amount so expended as a debt, and secure it to them in preference to other debts.

The ruling that permanent improvements made by an insolvent debtor on the property of his wife or children is a voluntary transfer of property, prohibited by the Virginia statute of voluntary conveyances, is in accordance with the principle established by a long line of judicial decision in this State, beginning with *Penn* v. *Whitehead*, 12 Gratt. 79, that a permanent improvement of the property of wife or children, made by an insolvent debtor, whether in the way of services performed or of money expended, if without consideration, is a voluntary transfer of property under sec. 2459 of the Code. See *Catlett* v. *Alsop*, 7 Va. Law Reg. 625; 3 Id. 430.

The opinion in the principal case also makes a sound qualification of the rule enforced in *Jeffreys* v. *So.-West Imp. Co.*, 88 Va. 862, that a mere litigious right cannot be assigned. In that case the suit was by, or on behalf of, an assignee, to set aside a deed for fraud committed upon the assignor. See further on this subject, *Marshall* v. *Means* (Ga.), 56 Am. Dec. 444, and note; *Sanborn* v. *Doe* (Cal.), 27 Am. St. Rep. 101, and note.

HUTCHINSON & OTHERS v. MAXWELL & OTHERS.*

Supreme Court of Appeals: At Richmond.

January 30, 1902.

1. SPENDTHRIFT TRUSTS—*Life estates—Liability for debts.* Liability for debts and the power of alienation are inseparable incidents of a life estate, legal or equitable, in a party who is *sui juris*, except where there is a termination or limitation over of the estate dependent upon attempted alienation or seizure by creditors; and all conditions in restraint of such incidents are repugnant and void. Whatever rights, legal or equitable, a debtor who is *sui juris* has in property, his creditor may subject, unless exempt by statute, or so intimately connected or blended with the rights of others that they cannot be subjected without prejudice to the latter's rights. In this State equitable estates are, by express provision of statute, liable for debts to the same extent as legal estates. Code, sec. 2428. *Garland* v. *Garland*, 87 Va. 758, criticised.
2. SPENDTHRIFT TRUSTS—*Maintenance—Discretion of trustee—Rights of creditor.* Although trustees may be invested with discretion as to what portion of the income from a trust fund shall be applied to the maintenance and support of a debtor, yet if they cannot exclude him altogether his assignee and creditors

*Reported by M. P. Burks, State Reporter.